

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT ANGELO CAICO,

Defendant and Appellant.

C090495

(Super. Ct. No. 62156545)

Defendant Vincent Angelo Caico left a casino after a night of drinking and caused a car accident involving two other vehicles; multiple people were seriously hurt in the collision. He pleaded no contest to driving under the influence of alcohol causing injury and admitted several enhancements in exchange for a stipulated sentence of 11 years in state prison.

On appeal, he contends the trial court violated his constitutional rights to due process and to be free from excessive fines by imposing various fees, fines, and assessments without first determining his ability to pay, relying on *People v. Dueñas* (2019) 30 Cal.App.5th 1157. To the extent he failed to object to the financial obligations when imposed, he argues his counsel was constitutionally ineffective.

We conclude the trial court did not err in imposing the challenged fees, fines, and assessments without first determining defendant had the ability to pay them. We therefore reject his *Dueñas* challenge and his derivative ineffective assistance claim, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2017 defendant and his wife left a casino; defendant was driving. He had been drinking. Defendant struck a car in front of him driven by R.G., causing R.G. to cross into oncoming traffic where his car was hit by a second vehicle. Defendant's wife and the drivers of the other vehicles were severely injured in the accident. A blood sample taken three hours after the collision showed defendant had a blood-alcohol level of .107 percent.

Defendant was charged with multiple offenses stemming from the accident, and in June 2019, he pleaded no contest to driving under the influence of alcohol causing injury (Veh. Code, § 23153, subd. (a)) in exchange for a stipulated term of 11 years in state prison. Under the terms of the plea bargain, defendant also admitted that he had a prior serious felony conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)),¹ had served a prior prison term for a violent felony (§ 667.5, subd. (a)), personally inflicted great bodily injury (§ 12022.7, subd. (a)), and caused death or great bodily

¹ Undesignated statutory references are to the Penal Code.

injury to more than one victim (Veh. Code, § 23558). The remaining charges and allegations were dismissed under the agreement.

In August 2019 the trial court sentenced defendant to the negotiated term of 11 years in prison as follows: two years for the driving under the influence offense, doubled to four years for the strike prior, plus three years for the prior prison term enhancement, three years for the great bodily injury enhancement, and one year for the additional victim enhancement. The court imposed fees, fines, and assessments without objection, and awarded defendant custody, conduct, and education credits. Defendant timely appealed.

DISCUSSION

The trial court imposed various fines, fees, and assessments at sentencing that included a \$3,300 restitution fine (§ 1202.4), a \$3,300 parole revocation restitution fine, suspended unless parole was revoked (§ 1202.45), a \$30 court facilities assessment (Gov. Code, § 70373), a \$40 court operations assessment (§ 1465.8), a \$553 booking fee, a \$172 incarceration fee, and a \$350 presentence investigation fee.

Relying primarily on *People v. Dueñas*, *supra*, 30 Cal.App.5th 1157, defendant argues the imposition of these fees, fines, and assessments without an ability to pay hearing violated his right to due process. Alternatively, he contends his counsel was ineffective for failing to object on ability to pay grounds. The People contend defendant forfeited his *Dueñas* challenge, and that he cannot show prejudice from his counsel's failure to object below.

We are not persuaded that *Dueñas* was correctly decided. Our Supreme Court is now poised to resolve this question, having granted review in *People v. Kopp* (2019) 38 Cal.App.5th 47, review granted November 13, 2019, S257844, which agreed with the court's conclusion in *Dueñas* that due process requires the trial court to conduct an ability to pay hearing and ascertain a defendant's ability to pay before it imposes court facilities and court operations assessments under section 1465.8 and Government Code section

70373, but found, contrary to *Dueñas*, that the same did not apply for restitution fines under section 1202.4 (*Kopp*, at pp. 95-96).

In the meantime, we join those authorities that have concluded the principles of due process do not require a determination of a defendant's present ability to pay before imposing the fines and assessments at issue in *Dueñas* and in this proceeding. (*People v. Kingston* (2019) 41 Cal.App.5th 272, 279; *People v. Hicks* (2019) 40 Cal.App.5th 320, 329, rev. granted Nov. 26, 2019, S258946; *People v. Aviles* (2019) 39 Cal.App.5th 1055, 1069; *People v. Caceres* (2019) 39 Cal.App.5th 917, 928.) Having done so, we reject defendant's *Dueñas* challenge to the above-referenced fines, fees, and assessments and the derivative claim of ineffective assistance of counsel. (*People v. Kipp* (1998) 18 Cal.4th 349, 377 [failure to assert a meritless defense does not demonstrate ineffective assistance of counsel].)

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Raye, P. J.

/s/
Renner, J.